

CIVIL CASE NO. 2:11cv18

Defendants.

ORDER

- (1) The Motion to Dismiss [Doc. 22] filed by the Defendant Olufemi Abiola Babalola; the Motion to Dismiss for Lack of Jurisdiction filed the Defendant Midwest Health System, Inc., f/k/a Harris Regional Hospital, Inc. (“Medwest”) [Doc. 25];
- (2) The Motion to Dismiss for Improper Service [Doc. 31] filed by the Defendant Midwest; the Motion to Dismiss Defendant Midwest [Doc. 37] filed by the Plaintiff;

- (3) The Magistrate Judge's Memorandum and Recommendation [Doc. 48] regarding the disposition of these motions;
- (4) Defendant Babalola's Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 49];
- (5) Defendant Midwest's Response to Defendant Babalola's Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 50]; and
- (6) Plaintiff's Reply to Defendant Babalola's Objections to Magistrate Judge's Memorandum and Recommendation [Doc. 51].

After careful consideration of the Magistrate Judge's Recommendation [Doc. 48], the Defendant's Objections thereto [Doc. 49], and the Replies of Defendant Midwest and the Plaintiff [Docs. 50, 51], the Court finds that the Magistrate Judge's proposed conclusions of law are consistent with current case law. Defendant Babalola argues that Midwest cannot be dropped from the case because it is a necessary and indispensable party. Specifically, the Defendant argues that Midwest is necessary and indispensable "in light of its shared interests in the litigation, such as the amount of insurance coverage applicable to Plaintiff's claim and the privileged and/or confidential information in its possession regarding Defendant Babalola's employment, credentialing,

and peer review.” [Doc. 49 at 7]. Any insurance coverage by a defendant or any potential defendant, however, is utterly irrelevant to the dispute between the parties. Furthermore, the information that may be in the possession of Midwest regarding Defendant Babalola’s employment, credentialing or peer review is subject to discovery in this case regardless of whether Midwest is a party defendant. Defendant Babalola has utterly failed to articulate any grounds on which Midwest is remotely necessary or indispensable to this action. Defendant’s Objections to the Memorandum and Recommendation are without merit. Accordingly, the Court hereby overrules the Defendant’s Objections and accepts the Magistrate Judge’s Recommendation that the Plaintiff’s Motion to Dismiss Midwest be granted, and the Defendants’ remaining Motions to Dismiss be denied as moot.

In his Objections, Defendant Babalola requests that the Court certify its decision for an immediate appeal and enter an Order staying any further proceedings in this Court pending appeal to the Fourth Circuit Court of Appeals. [Doc. 49 at 14]. The present Order, however, does not involve “a controlling question of law as to which there is substantial ground for difference of opinion.” 28 U.S.C. § 1292(b). Further, allowing an immediate appeal of this issue would not “materially advance the ultimate termination of

the litigation.” Id. For these reasons, the Defendant’s request for certification for immediate appeal is denied.

IT IS, THEREFORE, ORDERED that the Defendant Babalola’s Objections to the Magistrate Judge’s Memorandum and Recommendation [Doc. 49] are **OVERRULED** and the Magistrate Judge’s Memorandum and Recommendation [Doc. 48] is hereby **ACCEPTED**.

IT IS FURTHER ORDERED that, for the reasons stated in the Memorandum and Recommendation, the Plaintiff’s Motion to Dismiss Midwest [Doc. 37] is **GRANTED**, and the Defendant Midwest Health Systems, Inc. f/k/a Harris Regional Hospital, Inc. is hereby **DISMISSED** as a party to this action.

IT IS FURTHER ORDERED that the Motions to Dismiss [Docs. 22, 25, 31] filed by Defendants Babalola and Midwest are hereby **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Defendant Babalola’s request for certification of this Order for immediate appeal pursuant to 28 U.S.C. § 1292(b) is **DENIED**.

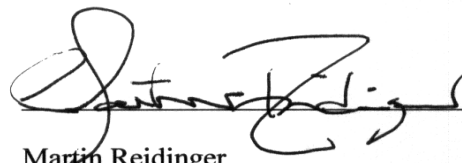
IT IS FURTHER ORDERED that the stay of discovery in this matter is hereby **LIFTED**.

IT IS FURTHER ORDERED that the Pretrial Order and Case Management Plan [Doc. 8] is hereby **AMENDED** as follows:

- (1) All discovery shall be completed no later than **September 1, 2012**;
- (2) Mediation shall be completed by **September 15, 2012**;
- (3) All motions except motions *in limine* and motions to continue shall be filed no later than **October 1, 2012**; and
- (4) Trial is scheduled to commence **WITH a jury** during the first civil trial term beginning on or after **January 28, 2013**.

IT IS SO ORDERED.

Signed: May 18, 2012


Martin Reidinger
United States District Judge

